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SWIFT *v.* TYSON VS. GELPCKE *v.* DUBUQUE. — The REVIEW is requested to add to the citations in Mr. Rand's article in the last number the following authorities: *Harris* v. *Gex*, 55 New York, 421; and *Forepaugh* v. *R. R. Co.*, 128 Pa. State, 217, which is contrary to the decision in *Faulkner* v. *Hart*, mentioned on page 333.

PROPOSED CHANGES IN THE BRIBERY LAWS. — The Attorney-General of Massachusetts, in his report for the year ending January 16, 1895, strongly advises material changes in the present bribery laws (pp. 26–29). As long as a party to the offence may constitutionally refuse to testify, on the ground that it may tend to criminate him, it is of little use to establish machinery for the enforcement of any law against corrupt practices in elections. Some effective way of securing such testimony must be adopted, it is urged, and the confinement of the criminality of the act to the person who pays the money is one of the means proposed. Whether this will work well in election cases or not, whether it would not be more expedient to punish the taker of the bribe rather than the giver, — are serious and important questions. In Kansas, where the method suggested was carried into effect in 1869, and given the widest scope, the results seem to have been far from gratifying. Indeed, there is now an agitation for the repeal of that law, and the substitution of another making only the bribe-taker punishable, on the ground that it is much more probable that one who has bribed a public officer might make that fact known, than that the public officer would proclaim his own disgrace. This reasoning, while certainly strong when the recipient is a public official, makes rather the other way when he, as candidate, is the giver. Since it is practically with this latter case alone, *i. e.* bribery at elections, that the Attorney-General is concerned, it would certainly seem that his suggestion was not open to the harsh criticisms which have

been passed on the existing law of Kansas. In its present restricted form, the measure proposed appears a sound one; how it would succeed in a wider sphere might be an extremely dubious problem, and one which might require for its solution a long experience of the respective merits and disadvantages of each method of securing evidence.

INTERSTATE EXTRADITION. — An interesting point, arising under the clause in the Constitution of the United States providing for the surrender of fugitives from justice, is discussed by the Attorney-General in an opinion printed on p. 41. A requisition from the Governor of Nebraska was sufficient in form according to the U. S. Rev. Stats. § 5278, and not sufficient according to Ch. 218, § 1, of the Massachusetts Public Statutes. The Attorney-General was of opinion that the latter statute was void so far as it conflicted with the U. S. statute.

The Attorney-General's opinions, being written for a layman, do not cite authorities. An examination of the cases, however, seems to show that *Kentucky* v. *Denison*, 24 How. 66, decides that the United States statute and the provision of the United States Constitution create only a "moral duty." Taney, C. J., there said explicitly that "the Act does not provide any means to compel the execution of this duty, nor inflict any punishment for neglect or refusal on the part of the executive of the State; nor is there any clause or provision in the Constitution which arms the government of the United States with this power." The provision in the Constitution is there held to be addressed solely to the executive of the State, and it is expressly said that "The Federal Government under the Constitution has no power . . . to compel him to perform it" (p. 107).

If the constitutional provision be not enforceable against the State, as is declared in *Kentucky* v. *Denison* to be the case, it would seem logically to follow that for lack of binding force it cannot make void the Act of the State Legislature; for otherwise it will be left in this singular position: it will have no Federal sanction, and yet within the State it will, as part of the Federal Constitution, operate to prevent that control of the State officials from within which is also impossible from without. It would seem, therefore, that the opinion of the Attorney-General is not in accord with the authority of the U. S. Supreme Court. Against it may also be cited the declaration that the same statute is constitutional, made by a previous Attorney-General of Massachusetts in giving his opinion in the celebrated *Kimpton Case*, in 1878, 2 Moore on Extradition, 995. The *Kimpton Case* may be distinguished, and is believed to have been recently followed, but it is submitted that any distinction from this opinion is really without a difference.

It would seem that the circumstances of the case at once show it to be desirable that the status of the Massachusetts statute should be permanently fixed, and that the opinions of Attorney-Generals are not adequate as a means to that end. It would also seem that the case was one where the Judges of the Supreme Court might have been appropriately called in to fill their constitutional function of advisers to the Governor and Council. Surely, when a statute which has long stood upon the statute-book is to be declared unconstitutional, an "important question of law" and a "solemn occasion" is presented. (Mass. Const., Ch. III., Art. II.) Then *Kentucky* v. *Denison*, an extreme States-Rights decision, might be denied or distinguished away. Any distinction from the *Kimpton Case*